STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Timbers Preservation, LP

Petitioner,

FHFC CASE NO._2024-062VW___
Application No. 2020-162C/2021-326C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.002(96) (2019) AND 2019 QUALIFIED ALLOCATION PLAN

Petitioner Timbers Preservation, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the provisions of the 2019 Qualified Allocation Plan ("2019 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Timbers Preservation, LP
1022 West 23rd Street,
Suite 300
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981
E-mail: joey.chapman@royalamerican.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Cecilia Redding Boyd
Florida Bar No. 0004030
Boyd Law Office, P.A.
211East Fourth Street
Panama City, FL 32401
Tel: (850)872-8514
Email: cboyd@boydlawofficepa.com

3. On October 24, 2019, Petitioner timely submitted its Application in response to RFA 2019-115 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") to assist in the rehabilitation of Timbers Apartments, a 32-unit development located in Cross City, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $387,556. The Development received an allocation of 2020 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on February 5, 2020. On August 21, 2020, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Petitioner's deadline to submit site control documentation and its 10% test certification was February 28, 2021, the deadline to commence construction was May 31, 2021, and the placed-in-service deadline was December 31, 2022. Subsequently, the Board approved an exchange of credits on July 30, 2021, and a new carryover allocation was executed on August 24, 2021 with an allocation of tax credits in an amount not to exceed $387,556 annually. Per the new Carryover Agreement, the site control and 10% test deadlines were February 28, 2022, the commencement of construction deadline was May 31, 2022 and the placed-in-service deadline was December 31, 2023. The 10% test deadline was extended to December 31, 2022, and the 10% test was satisfied as of December 20, 2022. On June 28, 2024, the Board approved a request by Petitioner to modify its development category after submission of its application from "Preservation" to "Acquisition and Preservation."

Subsequent deadline extensions were granted, and on August 13, 2024, Petitioner requested a final extension to December 31, 2024 of the deadlines for commencement of construction, closing its tax credit partnership, site control and the credit underwriting report. The Carryover Agreement's placed-in-service deadline of December 31, 2023 was automatically extended to December 31, 2024 by IRS Notice 2022-52.

B. WAIVER IS PERMANENT

4. The waiver sought is permanent in nature.

C. THE RULE FROM WHICH THE WAIVER IS REQUESTED

5. Petitioner requests waiver of Rule 67-48.002(96), F.A.C. (2019) that adopted Subsection II.K. of the 2019 QAP, which provides as follows:

> "K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the 67-48.002(96), F.A.C. IRC, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

A Development located in a HUD designated DDA or QCT at the time of original allocation may retain its designation as such."

6. The process found in the 2019 QAP permits a developer to return its allocation of housing tax credits in the last calendar quarter of the year 2024 in exchange for an allocation not to exceed the amount of the credits returned and the issuance of a new Carryover Allocation Agreement under certain circumstances. Petitioner is requesting to return its allocation of housing tax credits in exchange for an allocating the credits to Petitioner with a placed-in-service deadline of December 31, 2026.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP

7. The 2019 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2019)* (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K OF THE 2019 QAP.

8. As mentioned above, Petitioner requests a waiver of the requirements found in the 2019 QAP to place the Development in service by December 31, 2024 and approve the exchange for an allocation not to exceed the amount of the credits returned and the issuance of a new Carryover Allocation Agreement allocating the credits to Petitioner with a placed-in-service deadline of December 31, 2026.

9. The culminative effect of the following events necessitates an extension of the December 31, 2024 placed-in-service deadline, thereby requiring a credit exchange.

a) As a condition of the RFA, the Petitioner must assume an existing RD515 loan provided by the United States Rural Development Administration ("RD"). Beginning in 2020, RD began a nationwide reorganization of their regional and local staff members operational responsibilities. This reorganization negatively impacted RD's ability to process any type of request or to follow through with any type of loan assignment and restructuring. In addition, during the COVID Pandemic, RD effectively shut down causing further delays. Finally, RD processed Petitioner's loan assumption request, and RD issued its letter of conditions on March 4, 2024 approving the loan transfer.

b) Due to the long delays in RD processing Petitioner's loan assumption request, the original financing Petitioner had obtained was no longer available because Petitioner's original financial partners and lenders withdrew from the deal. Petitioner had to go back to the market to secure terms for the requisite equity investments and construction and permanent loans to finance the Development. Petitioner worked diligently to obtain alternative financing, but the process took several additional months and further delayed the Development. Petitioner has agreed to terms with a new partner and lenders. The construction lender is Regions Bank, the equity investor is RAH Investor 445 LLC, and the permanent lender is Neighborhood Lenders Partners of Florida, Inc.

c) Now that RD has issued its letter of conditions and alternative financing has been secured, Petitioner is conducting weekly closing calls with its

lenders, equity investor and other necessary parties and anticipates closing on the construction financing and the partnership in the next sixty days with the express goal of closing no later than October 31, 2024. However, closing cannot occur unless the placed-in-service deadline and other deadlines are extended accordingly.

10. As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The issues which ensued due to RD's nationwide organizational restructure and RD's essential shut down due to the Pandemic were unforeseen and unanticipated by the Petitioner.

11. Petitioner has exercised due diligence in seeking to resolve the issues that caused the delay. Petitioner has stood ready, willing and able to proceed with the Development and has timely responded to any requests from RD.

12. Petitioner was invited to credit underwriting approximately one month before the pandemic Covid-19 became a household name. In spite of the difficulties presented by the pandemic, Petitioner was able to complete its plans, reports, appraisals and other necessary items and submitted its request for RD approval of the assumption and transfer by and to Petitioner on August 19, 2021. RD requested additional information which Petitioner provided in October of 2021. RD required a new appraisal which was submitted in November of 2021. In January of 2022, RD rejected the format of the appraisal and apologized for the delay in providing guidance. RD advised Petitioner the reviewer was "catching up on their workload." In March of 2022, RD advised Petitioner its organizational documents and construction documents were under review. RD provided comments to Petitioner's revised appraisal in October 2022. A CNA was completed and submitted to RD in August 2022. As of December

1, 2022, Petitioner was awaiting comments from RD on the CNA, the Petitioner's organizational documents and the construction plans. RD accepted Petitioner's appraisal on January 31, 2023. Finally, with information current through December 31, 2022, RD's underwriters reviewed and recommended the Development on February 28 and 29, 2024. RD granted approval on March 4, 2024. With the approval in hand, Petitioner began the process to find the funding for the Development since the original lenders and partner were no longer willing to participate. Equity and construction loan terms were finalized effective July 15, 2024 with Regions Bank and Regions Affordable Housing, LLC. Closing calls have been held regularly since August, and all parties are expecting to close before the end of October.

13. The Development still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

14. Under Section §120.542(1), *Fla. Stat*., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[1] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. §120.542(2), *Fla. Stat.* (2016).

15. In this instance, Petitioner meets the standards for a waiver of the Rule and the requirements of the 2019 QAP. The requested waiver will not adversely impact the

[1] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. 120.542(2), Fla. Stat. (2016)

Development or Florida Housing and will ensure that 32 existing subsidized affordable family housing units will be preserved and made available for the target population in Dixie County, Florida. The strict application of the placed-in-service deadline will create substantial hardship for Petitioner because it will not be able to rehabilitate the Development. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

16. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of preserving the current supply of subsidized affordable housing through private investment in persons of low-income and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. See §420.5099(2), *Fla. Stat*. (2020).

F. ACTION REQUESTED

WHEREFORE, Petitioner Timbers Preservation, LP respectfully requests Florida Housing:

A. Grant this Petition and all of the relief requested herein;

B. Grant the requested waiver of the requirements found in the 2019 QAP and allow the requested credit exchange and extend the Development's placed-in-service deadline;

C. Grant a corresponding extension of deadlines relative to those credits; and

D. Grant such further relief as it may deem appropriate.

Respectfully submitted on October 4, 2024.

/s/ Cecilia Redding Boyd
Cecilia Redding Boyd
Florida Bar No. 0004030
Boyd Law Office, P.A.
211 East Fourth Street
Panama City, FL 32401
Tel: (850)872-8514
Email: cboyd@boydlawofficepa.com
Counsel for Petitioner, Timbers Preservation, LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 this 4th day of October, 2024. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us.

/s/ Cecilia Redding Boyd